

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

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This document relates to:

Barbary, et al. v. Bayer  
Corp., et al., No. 04-690

ORDER GRANTING MOTION FOR  
RECONSIDERATION, VACATING  
JUDGMENT AND REINSTATING  
CASE

This matter comes before the court on Plaintiffs Brian Patrick Barbary, Sr., Janice Barbary, Briana Barbary, Brenda Barbary, and Brian Barbary, Jr.'s ("plaintiffs") Motion for New Trial; Motion to Reinstate; and/or Motion for Reconsideration of the court's Order of Dismissal with Prejudice for Failure to Comply with Case Management Order ("CMO") 19.<sup>1</sup> Having reviewed the briefing, and, being fully advised, the court finds and concludes as follows:

The court issued an Order to Show Cause in this action on November 8, 2004. This order required plaintiffs to show cause

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<sup>1</sup>The court will treat plaintiffs' motion as a motion for reconsideration.

1 why their case should not be dismissed for failure to comply with  
2 CMO 19. Plaintiffs filed no opposition to dismissal, and on  
3 February 4, 2005, the court entered an order of dismissal with  
4 prejudice. Plaintiffs filed a timely motion for reconsideration,  
5 and the court requested responsive briefing from defendants  
6 pursuant to LR 7(h)(3). Defendant Bayer Corporation ("Bayer")  
7 filed a response on March 21, 2005.

8 Local Rule 7(h) provides:

9 Motions for reconsideration are disfavored. The  
10 court will ordinarily deny such motions in the  
11 absence of a showing of manifest error in the prior  
12 ruling or a showing of new facts or legal authority  
earlier with reasonable diligence.

13 The instant action presents a circumstance of manifest  
14 error. The parties are in agreement that plaintiffs' failure to  
15 respond to the court's Order to Show Cause was the result of a  
16 miscommunication between plaintiffs and Bayer. In fact, plain-  
17 tiffs and defendants have been in agreement since October 18,  
18 2004, that this case was not appropriate for dismissal for  
19 failure to comply with CMO 19.

20 For the reasons stated above, the Court hereby GRANTS  
21 plaintiffs' motion for reconsideration, and VACATES the court's  
22 February 4, 2005 Order of Dismissal with Prejudice. Plaintiffs'  
23 case is hereby REINSTATED.  
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1 DATED at Seattle, Washington this 13<sup>th</sup> day of May, 2005.

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4 Barbara Jacobs Rothstein  
5 U.S. District Court Judge  
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